

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a  
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

ELB ELECTRONICS, INC., ET AL.

Defendants.

C.A. No. 15-056-RGA

Consolidated Lead Action

BLACKBIRD TECH LLC d/b/a  
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

FEIT ELECTRIC COMPANY, INC.,

Defendant.

C.A. No. 15-058-RGA

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**JOINT STATUS REPORT**

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Pursuant to the Court’s November 9, 2020 Order (D.I. 172), Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird”) and Defendant Feit Electric Company, Inc. (“Feit Electric”) jointly submit this status report regarding necessary trial logistics in the consolidated action styled *Blackbird Tech LLC v. Feit Electric Company, Inc.*, C.A. No. 1:15-cv-00058-RGA (the “Feit Electric Action”) that result from COVID-19 concerns as follows:

1. **Possible Live Witnesses** (name, origin (approximate), any concerns regarding live testimony of which the Parties are aware):

**Name:** Bretschneider, Eric  
**Origin:** Texas  
**Concerns:** Family member undergoing chemotherapy; risk of travel; risk of high incidence of COVID at origin

**Name:** Feit, Aaron  
**Origin:** California  
**Concerns:** Risk of travel; risk of high incidence of COVID at origin; personal health issues; age

**Name:** Hall, Dawn  
**Origin:** New Jersey  
**Concerns:** Restrictions on return travel

**Name:** Harris, Daniel  
**Origin:** Massachusetts  
**Concerns:** Restrictions on return travel; risk of travel

**Name:** Hess, Norman  
**Origin:** Utah/Arizona  
**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Koomson, Valencia  
**Origin:** Massachusetts  
**Concerns:** Restrictions on return travel; risk of travel

**Name:** Schaefer, Dan  
**Origin:** California  
**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Singh, Anu  
**Origin:** California  
**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Stacy, Brian  
**Origin:** New York/New Jersey/Florida  
**Concerns:** Restrictions on return travel; risk of travel; risk of high incidence of COVID at origin

**Name:** Wacek, Joel  
**Origin:** Massachusetts  
**Concerns:** Restrictions on return travel; risk of travel

Three of Blackbird's witnesses and two of its trial counsel live in Massachusetts, and another trial counsel lives in Chicago, both of which implement restrictions upon return from most states, including Delaware.<sup>1, 2</sup> Another witness lives in New York, which has similar restrictions on returning residents.<sup>3</sup> Feit Electric's possible live witnesses live in California, Texas, and New Jersey. Feit Electric's non-Delaware trial counsel live in New York and New Jersey.

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<sup>1</sup> See <https://www.mass.gov/info-details/covid-19-travel-order>

<sup>2</sup> <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>

<sup>3</sup> See <https://www.governor.ny.gov/news/no-2052-quarantine-restrictions-travelers-arriving-new-york>

Massachusetts, New York, and Chicago require that returning residents quarantine for 14 days and New Jersey has an advisory 14 day quarantine on return travel to the state<sup>4</sup> which would require these witnesses and counsel to remain physically separate from their families and otherwise refrain from leaving their residences. COVID is spiking nationally, with the country now nearing 145,000 new cases *per day*,<sup>5</sup> and trial would require attorneys to travel in to Delaware from New Jersey and Virginia, both of which have hit new peak levels of infection this week.<sup>6, 7</sup>

Moreover, witnesses will be travelling from California, Texas, and Florida, which are in the top 5 states by number of COVID infections within the last 7 days,<sup>8</sup> while Utah is in the top 10 states by infection per capita.<sup>9</sup>

*Feit Electric's position:* In light of the extensive health risks, as well as the challenges of empaneling a representative jury during these times, Feit Electric respectfully requests that the trial be postponed until a time when it can be safely held in person. Because injunctive relief is not at issue, Plaintiff can be fully compensated by money damages at a later date should it prevail. Plaintiff does not oppose this request.

2. **Anticipated Trial Hours** (opening statements and testimony only):

*Blackbird's Position:* Blackbird anticipates requiring 18 hours to present its case, assuming live witness testimony.

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<sup>4</sup> See <https://covid19.nj.gov/faqs/nj-information/travel-and-transportation/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey#:~:text=New%20Jersey%20welcomes%20travel%20to,days%20after%20leaving%20that%20state>

<sup>5</sup> <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

<sup>6</sup> [https://www.washingtonpost.com/local/coronavirus-increase-dc-region/2020/11/09/2229ef88-2296-11eb-952e-0c475972cfc0\\_story.html](https://www.washingtonpost.com/local/coronavirus-increase-dc-region/2020/11/09/2229ef88-2296-11eb-952e-0c475972cfc0_story.html)

<sup>7</sup> <https://njbiz.com/nj-hits-devastating-6-month-record-high-3800-new-covid-19-cases/>

<sup>8</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesinlast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days) (last accessed Oct. 26, 2020)

<sup>9</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last accessed Oct. 26, 2020)

Feit Electric's Position: Feit Electric anticipates requiring 15 hours to present its case, assuming live witness testimony.

3. **Minimum Number of Attorneys Needed to Appear in Front of the Jury:**

Blackbird's Position: Blackbird expects that it will require no fewer than five attorneys (including one Delaware counsel), a corporate representative, and one "hot seat" operator to be present in the courtroom during trial.

Feit Electric's Position: Feit Electric expects that it will require no fewer than three attorneys (including one Delaware counsel), a corporate representative, and "hot seat" operator to be present in the courtroom during trial.

4. **The Parties' Thoughts on Live, Remote, and Mixed Testimony:**

Blackbird's Position: Blackbird requests that all witnesses testify live. Specifically, the initial burden of proof falls on Blackbird as Plaintiff, whose presentation would be greatly hindered if forced to prepare and take testimony of its witnesses remotely when most, if not all, of them are expected to rely heavily on courtroom demonstratives and physical exhibits.

Feit Electric's Position: Feit Electric requests that all witnesses testify remotely. Feit Electric does not believe that any witness should be forced to travel and face the risk of becoming infected particularly in light of the recent dramatic increase in COVID-19 infections, that the safest course for all concerned is to limit in person contact during trial, and that it could be prejudicial to have some witnesses testifying live and other witnesses testifying remotely.

5. **Additional Concerns:**

None.

Dated: November 12, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was served via email upon all counsel of record via ECF on November 12, 2020.

/s/ Stamatios Stamoulis  
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